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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/822,277

04/12/2004

Mason B. Mount

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2170

7590

09/12/2007

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EXAMINER

RODRIGUEZ, WILLIAM H

ART UNIT

PAPER NUMBER

3746

MAIL DATE

DELIVERY MODE

09/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/822,277	Applicant(s) MOUNT, MASON B.	
	Examiner William H. Rodriguez/	Art Unit 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5 is/are rejected.
- 7) ☒ Claim(s) 3,6 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to the amendment and remarks filed 07/19/2007. Since the examiner has applied new grounds of rejection, this office action is being made non-final to afford the applicant the opportunity to respond to the new grounds of rejection.

Response to Arguments

1. Applicant's arguments filed 07/19/2007 with respect to claim 1 have been fully considered but they are not persuasive for the following reasons:

In the response applicant argues “the fact that the structure acts as a pump and as a valve has been ignored; Thus, the language a drive member selectively operable to either pump ...or to position... has been ignored”. Examiner disagrees because claim 1 does not recite the language “operable as a pump and as a valve” but “operable as a pump **or** a valve”. The actual claimed language “pump or valve” has been treated by the examiner because the prior art references teach an apparatus being used as a pump. Notice that the intended use language “pump or valve” is interpreted to mean that the invention can perform the desired function either as a pump or valve --one function at a time--but not both functions at the same time. Likewise, the desired functionality of the invention “to either reciprocate said plunger or to...” has been treated. The applied references teach the device being operable as a pump and accomplish the desired results “to reciprocate...”.

*Applicant argues that the invention has a single valve assembly while the prior art references teach two valves. Examiner disagrees because an assembly can be composed of a plurality of elements/components. Therefore, the two valves shown in the prior art references

Art Unit: 3746

are considered to be the "single valve assembly" since a valve assembly simply means an assembly comprising a plurality of valves.

Applicant's arguments with respect to claim 5 have been considered but are moot in view of the new ground(s) of rejection. See rejection below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

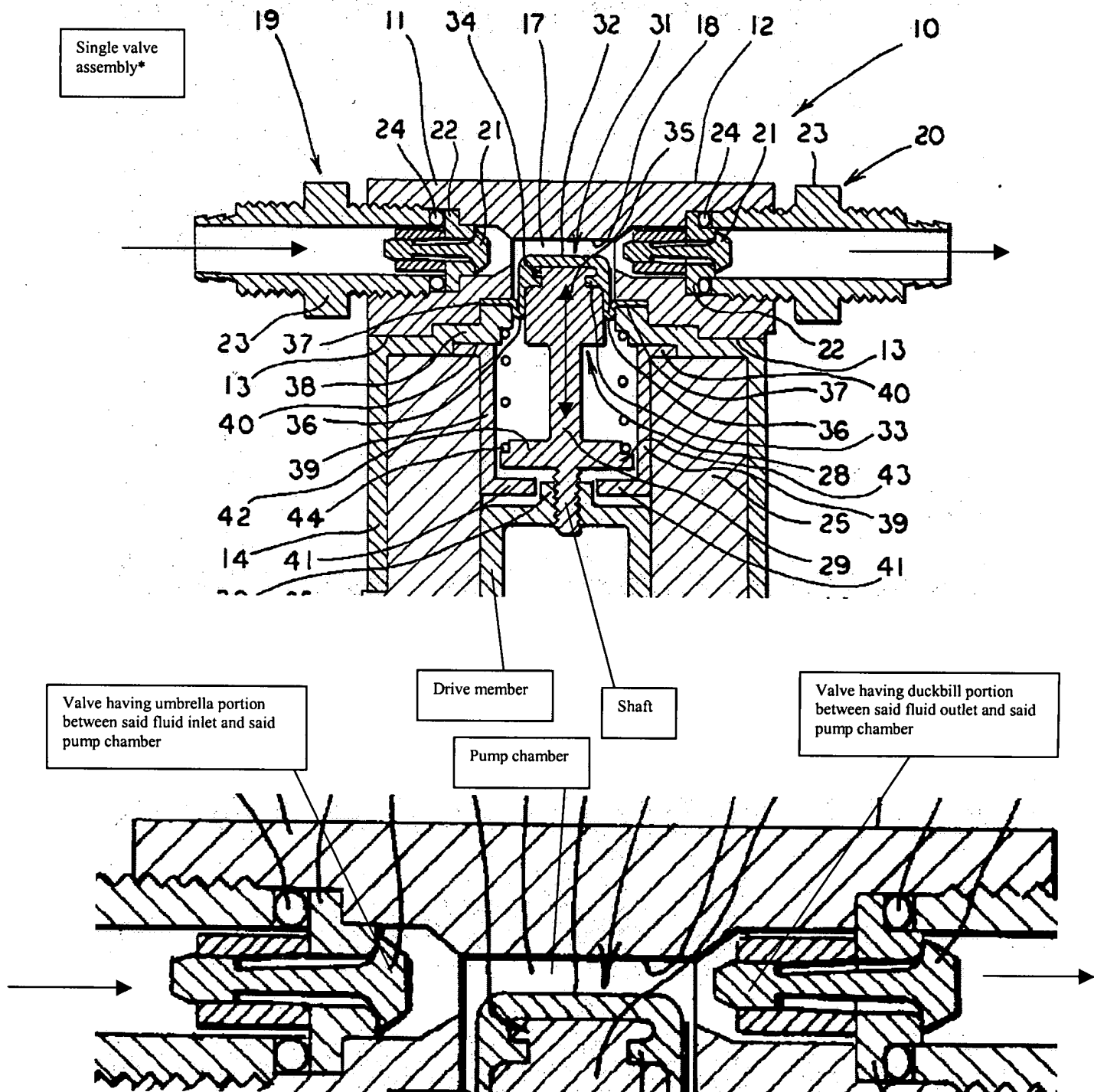
A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by McNaull et al. (US 6,758,657).

McNaull (particularly figure 1 below) teaches a pump comprising: a pump chamber 17, a fluid inlet 19, a fluid outlet 20, a single valve assembly* 21 positioned both between said fluid inlet and said pump chamber and between said fluid outlet and said pump chamber, a plunger 28 carrying a diaphragm 31 and a linear drive member 27 for reciprocating the plunger for drawing fluid through said inlet and expelling it through said outlet, said drive member 27 is a linear actuator (cl. 2 ll. 66-67) having a shaft carrying said plunger, said valve having an umbrella portion between said fluid inlet and said pump chamber and a duckbill portion between said pump chamber and said fluid outlet.

Art Unit: 3746



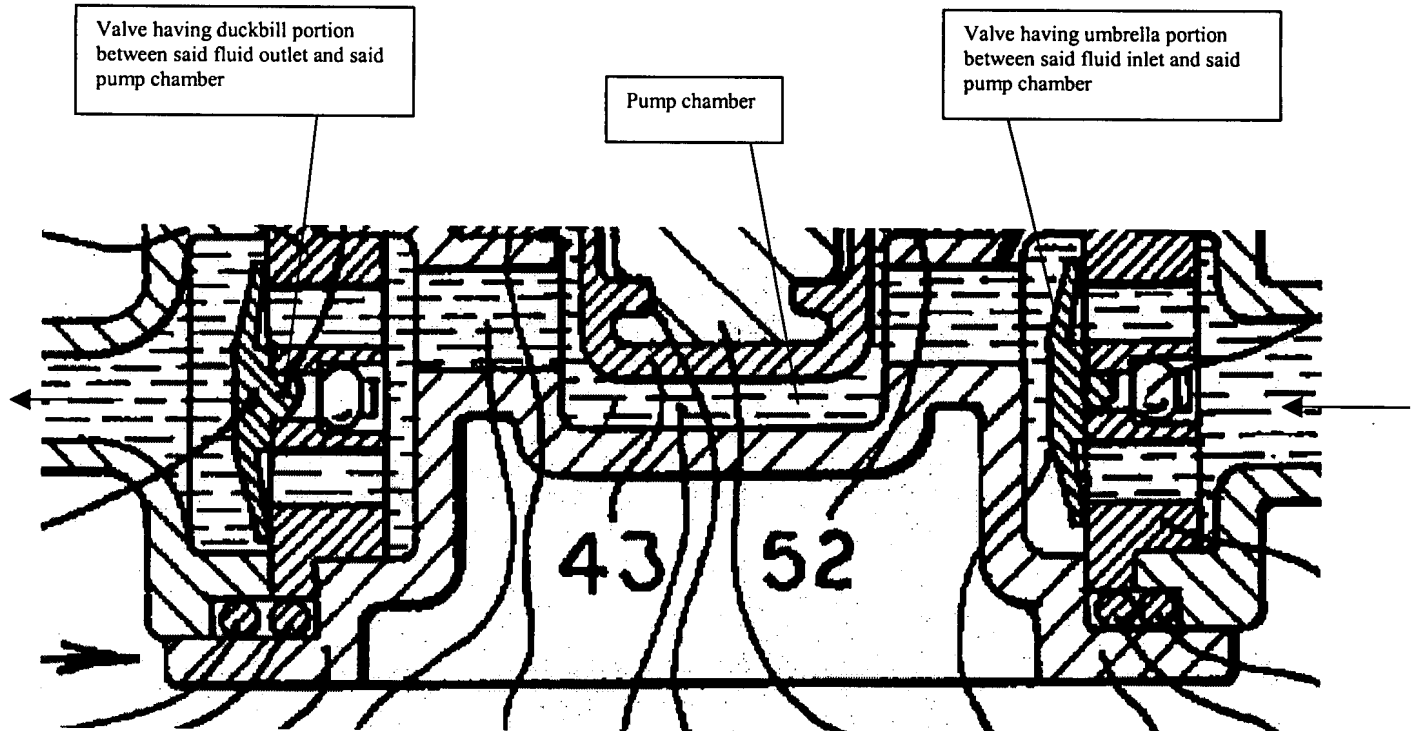
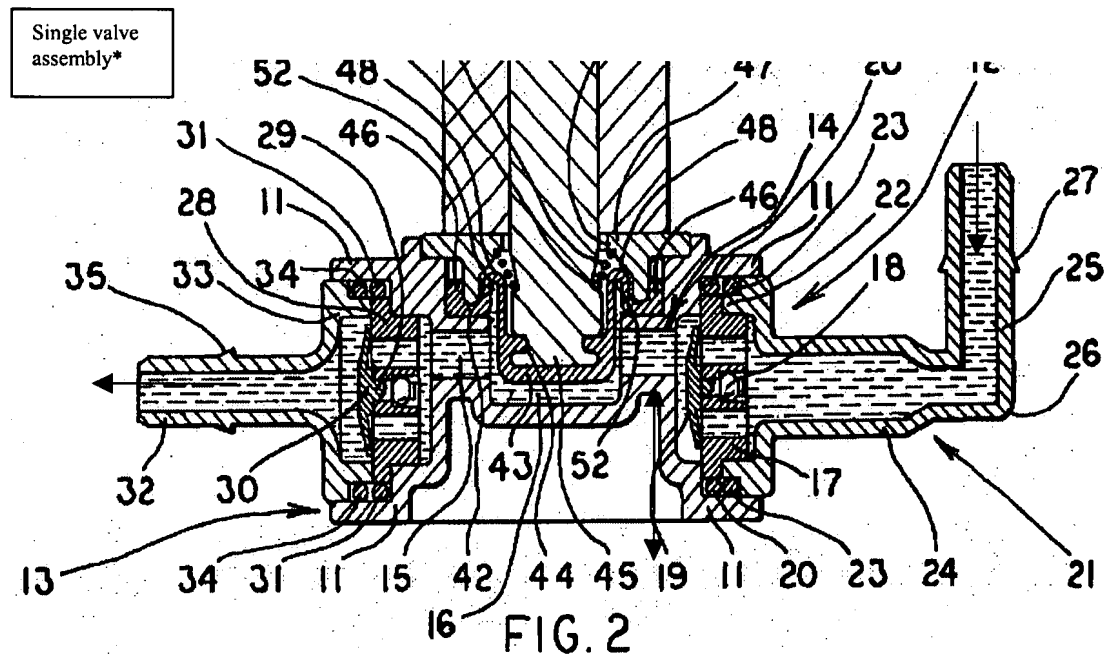
Art Unit: 3746

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

4. Claims 1 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Mount (US 6,568,926).

Mount (particularly figure 2 below) teaches a pump comprising: a pump chamber, a fluid inlet, a fluid outlet, a single valve assembly* 17 positioned both between said fluid inlet and said pump chamber and between said fluid outlet and said pump chamber, a plunger 39 carrying a diaphragm 42 and a linear drive member 37 for reciprocating the plunger for drawing fluid through said inlet and expelling it through said outlet, said valve having an umbrella portion 19 between said fluid inlet and said pump chamber and a duckbill portion between said pump chamber and said fluid outlet.

Art Unit: 3746



Art Unit: 3746

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Allowable Subject Matter

5. Claims 3, 6 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claim 4 is allowed in view of applicant's amendment to the claim (see amendment filed on 7/19/07).

Contact information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /William H. Rodríguez/ whose telephone number is 571-272-4831. The examiner can normally be reached on Monday-Friday 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3746

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William H. Rodríguez/
Primary Examiner
Art Unit 3746